



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2021-0216, FRL-9168-01-R10]

#### Air Plan Approval; AK; Incorporation by Reference Updates and Permit Program

##### Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Alaska State Implementation Plan (SIP) submitted on November 10, 2020. The revisions update the adoption by reference of certain Federal air regulations and add a pre-approved emission limit option that may be used to permit diesel engine facilities, among other changes. The EPA is proposing to approve the submitted revisions as consistent with Clean Air Act requirements.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2021-0216, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public

comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-6357 or [hall.kristin@epa.gov](mailto:hall.kristin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we” and “our” mean “the EPA”.

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## **I. Background**

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established by the EPA for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP is governed by section 110 of the Clean Air Act (CAA), and contains such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The SIP is a living compilation of these elements and is revised and updated by the state over time – to remain consistent with Federal requirements and to address changing air quality conditions in the state.

Alaska establishes state air quality requirements in Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50). The State then submits these provisions for EPA approval and incorporation by reference into the Alaska SIP in the Code of Federal Regulations (CFR) at 40 CFR part 52, subpart C, making the provisions

federally enforceable. The Alaska SIP includes a variety of air pollution control measures, including permitting programs designed to limit emissions from new and modified major and minor stationary sources. To ensure the permitting programs remain consistent with Federal requirements, the State adopts certain provisions of the Federal air regulations by reference as of a certain date and submits updates to the EPA for approval. Alaska also makes periodic changes to State permitting programs to improve implementation and to address changing air quality conditions in the State.

## **II. Evaluation of Submission**

### *A. Updates to Adoption by Reference*

On November 10, 2020, Alaska submitted revisions to the SIP that, among other things, update the adoption by reference of certain Federal regulations as of July 1, 2019.<sup>1</sup> These regulations include Federal test procedures and methods, major source pre-construction permitting requirements, public notice requirements for stationary source permits, guidelines on air quality models, and specific air quality definitions used in the Alaska SIP and adopted by reference in 18 AAC 50.035, 040, 250, 311, 502, and 990.

Alaska also submitted a revision to 18 AAC 50.077 to correct the date by which the State has adopted the National Fireplace Institute Policy Handbook. This change corrects the date of adoption from November 19, 2019, to November 22, 2019, the date on which the Hearth, Patio and Barbeque Board of Governors formally adopted the National Fireplace Institute Policy Handbook in its current form. In addition, the submitted revisions update references in 18 AAC 50.015 to area designations and classifications codified in 40 CFR part 81, revised as of July 1, 2019.

We have evaluated the submitted adoption updates and propose to approve them because these routine updates are designed keep state requirements current with requirements for SIPs.

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<sup>1</sup> The November 10, 2020, SIP revision also requests EPA approval of the Mendenhall Valley and Eagle River Limited Maintenance Plans. We are addressing these submitted plans in separate actions. Please see our proposed rulemakings published August 11, 2021 (86 FR 43984), and September 2, 2011 (86 FR 49278).

Additional details on the adoption updates may be found in the submission which is placed in the docket for this action.

*B. Pre-Approved Emission Limit Option*

Alaska submitted a revision to the SIP to add a pre-approved emission limit option to the existing minor stationary source permitting program. This new option, added to 18 AAC 50.230, is available to certain diesel engine facilities comprised entirely of newer, cleaner “EPA-tiered” diesel engines. EPA-tiered diesel engines are designed and manufactured to be cleaner-burning than older, pre-tiered engines.

Under this option, Alaska establishes standard fuel limits based on engine type, capacity, and certification tier under the EPA New Source Performance Standards for Stationary Compression Ignition Internal Combustion Engines.<sup>2</sup> The standard fuel limits are designed to effectively limit nitrogen oxide emissions to below the nitrogen oxide minor source permitting threshold, and by adhering to the fuel limit, sources may be able to avoid more complex permitting requirements in 18 AAC 50.

The EPA has recognized that for certain classes of sources, such as fuel-burning equipment, it is possible for states to establish enforceable emission limits that serve to limit potential to emit through exclusionary rules that apply to certain source categories.<sup>3</sup> To be approvable, an exclusionary rule must, among other things, be technically justified, require that the owner or operator specifically apply for coverage under the rule, require the applicant to comply with the limit in the rule, and provide that a violation of the rule is a violation of the SIP.<sup>4</sup>

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<sup>2</sup> Codified at 40 CFR part 60, subpart IIII, most recently revised on November 13, 2019, at 84 FR 61563.

<sup>3</sup> See Memorandum from JD Kent Berry, Acting Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), entitled “Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound Use,” dated October 15, 1993; Memorandum from John Seitz, Director, OAQPS, entitled “Approaches for Creating Federally-Enforceable Emission Limits,” dated November 3, 1993; Memorandum from Kathie A. Stein, Director, Air Enforcement Division, Office of Enforcement and Compliance Assurance, entitled “Enforceability Requirements for Limiting Potential to Emit Through SIP Rules and General Permits,” dated January 25, 1995 (“Enforceability Requirements for Limiting PTE”); Memorandum from John Seitz, Director, OAQPS, entitled “Potential to Emit Guidance for Specific Source Categories,” dated April 14, 1998.

<sup>4</sup> Enforceability Requirements for Limiting PTE, at 6.

Alaska's new pre-approved limit option is an exclusionary rule that allows a subject source to limit nitrogen oxide emissions by limiting the amount of diesel fuel used during the year. Alaska used updated EPA emissions factors to calculate the maximum quantity of fuel that may be burned by a specific engine type and certification tier, while staying below the 40 tons per year minor source potential to emit threshold in the Alaska SIP for nitrogen oxide emissions (18 AAC 50.502(c)(1)(B)). The submission states that the new option establishes "a diesel fuel limit corresponding to the lowest tiered engine at the facility; allowing 200,000; 300,000; 500,000; and 1,000,000 gallons of diesel fuel be consumed in any 12 consecutive months for engine tiers 1; 2; 3; and 4 respectively." Alaska compiled these fuel limits for the pre-approved emission limit option into a new table, Table 5a, added to 18 AAC 50.230.

In addition, Alaska established specific procedures a source must follow to operate under a pre-approved limit. To qualify for coverage, a source must submit a request to the State to operate under a specific limit in Table 5a, and a source must provide information justifying they qualify for coverage under the limit. After submitting the request, a source must follow specific monitoring, recordkeeping, and reporting requirements to ensure compliance with the limit.

The first pre-approved emission limit option for limiting nitrogen oxide emissions from certain stationary diesel engines was approved by the EPA as consistent with EPA exclusionary rules on August 14, 2007 (72 FR 45378). We have reviewed the new pre-approved emission limit option submitted on November 10, 2021, and find it is consistent with EPA guidance for exclusionary rules. Therefore, we proposed to approve the revision to 18 AAC 50.230 and incorporate it by reference into the Alaska SIP.

### *C. Electronic Notification and Reporting*

Alaska submitted revisions to several rules to clarify permit notification to the EPA and modernize permit reporting processes (18 AAC 50.205, 230, 502 and 542). Alaska revised minor source permit procedural requirements to make clear that upon receipt of a complete minor source permit application, the Alaska Department of Environmental Conservation (ADEC) will

not only notify the public and interested parties via SIP-approved procedures, but will also notify the EPA, consistent with EPA regulations at 40 CFR 51.161. In addition, Alaska revised the minor source permit regulations to encourage stationary source owners and operators to submit reports and other documents electronically to ADEC. Finally, Alaska added a requirement that permit reports and other documents be signed using state-approved digital signature procedures.

We propose to approve the electronic notification and reporting changes because they clarify SIP-approved requirements and are consistent with 40 CFR 51.161 public notice requirements for minor pre-construction permits and EPA guidance on federally enforceable state operating permit programs (54 FR 27274, June 28, 1989).

#### *D. Standard Permit Conditions*

The provision at 18 AAC 50.346 sets forth and incorporates by reference conditions that are required to be in certain air permits, unless ADEC determines that emissions unit-specific or stationary source-specific conditions more adequately meet the requirements of state air quality regulations in 18 AAC 50 or, in some cases, that no comparable condition is appropriate for the stationary source or emissions unit. This provision is not currently in the SIP. In the November 10, 2020, SIP submission, Alaska made changes to this regulation and the standard conditions it incorporates by reference.

The EPA continues to believe that 18 AAC 50.346 is not appropriate for SIP approval. By its terms, the standard conditions referenced in this section are used in permits “unless the department determines that emissions unit-specific or stationary source-specific conditions more adequately meet the requirements of this chapter.” Therefore, the final decision on the extent to which such permit conditions, or modifications thereof, are included in a permit issued under the SIP is made in the context of issuing the permit. See generally 80 FR 33840, pp. 33917-33918 (June 12, 2015). After consultation with the EPA, ADEC requested to remove this rule and associated standard conditions from the submission.

#### *E. Contingency Measures*

The submitted revisions to the SIP add new rule language to centralize contingency measure triggers for nonattainment and maintenance areas in the state. There is only one nonattainment area in Alaska, specifically the Fairbanks North Star Borough fine particulate matter (PM<sub>2.5</sub>) nonattainment area. There are also a handful of areas that were formerly in nonattainment for carbon monoxide and coarse particulate matter (PM<sub>10</sub>), but that have since been redesignated to attainment based on an approved maintenance plans that include contingency measures.

The revisions add paragraph (c) to 18 AAC 50.030 to specify that contingency measures are triggered upon (1) the effective date of an EPA finding that the area failed to attain the NAAQS by the applicable attainment date, failed to meet a quantitative milestone, failed to submit a required quantitative milestone report, or failed to meet a reasonable further progress requirement, or (2) an occurrence of a condition identified in the State Air Quality Control Plan as requiring implementation of a contingency measure. We have reviewed the centralized contingency measure provision and propose to approve it because it is consistent with title I, part D nonattainment and maintenance planning requirements and is also consistent with the EPA's implementing regulations for PM<sub>2.5</sub> in 40 CFR part 51, subpart Z.

#### *F. Editorial Changes*

The revisions to the SIP also include editorial changes to several rules to update the name of the Port of Alaska and to make consistent use of terms and fix cross-references. We propose to approve the editorial changes because they are administrative in nature and do not change the meaning of the regulations.

### **III. Proposed Action**

The EPA is proposing to approve, and incorporate by reference, the regulatory revisions to the Alaska SIP submitted on November 10, 2020, as being consistent with CAA section 110 and part C and D requirements. Upon final approval, the Alaska SIP will include the following regulations, State effective November 7, 2020:

- 18 AAC 50.015 Air Quality Designations, Classifications, and Control Regions;
- 18 AAC 50.030 State Air Quality Control Plan, except (a);
- 18 AAC 50.035 Documents, Procedures and Methods Adopted by Reference, except (a)(6), (a)(9), and (b)(4);
- 18 AAC 50.040 Federal Standards Adopted by Reference, except (a), (b), (c), (d), (e), (g), (j) and (k);
- 18 AAC 50.077 Standards for Wood-Fired Heating Devices, except (h);
- 18 AAC 50.205 Certification;
- 18 AAC 50.230 Preapproved Emission Limits;
- 18 AAC 50.250 Procedures and Criteria for Revising Air Quality Classifications;
- 18 AAC 50.311 Nonattainment Area Major Stationary Source Permits;
- 18 AAC 50.502 Minor Permits for Air Quality Protection;
- 18 AAC 50.540 Minor Permit: Application;
- 18 AAC 50.542 Minor Permit: Review and Issuance; and
- 18 AAC 50.990 Definitions.

#### **IV. Incorporation by Reference**

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in Section III of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k);



40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rulemaking does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 8, 2021.

Michelle L. Pirzadeh,  
*Acting Regional Administrator, Region 10.*

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